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14
15 UNITED STATES DISTRICT COURT
16 NORTHERN DISTRICT OF CALIFORNIA

17 FOIACONSCIOUSNESS.COM LLC,
18 Plaintiff,
19 v.

20 NATIONAL ARCHIVES AND RECORDS
21 ADMINISTRATION, a federal agency,
22 Defendant,

23 DALLAS COUNTY HISTORICAL
24 FOUNDATION d/b/a THE SIXTH FLOOR
25 MUSEUM AT DEALEY PLAZA,

26 Respondent.

27 Case No.: 3:24-cv-00997-JD

28 **JOINT CASE MANAGEMENT
STATEMENT**

Date: June 6, 2024
Time: 10:00 a.m.
Courtroom 11, 19th Floor

Pursuant to Local Rule 16-9, this Court's Standing Order, the Standing Order for All Judges of the Northern District of California re Contents of Joint Case Management Statement, and the Reassignment Order Setting CMC, (Dkt. 23) Plaintiff FOIACONSCIOUSNESS.COM LLC, ("Plaintiff") Defendant NATIONAL ARCHIVES AND RECORDS ADMINISTRATION, ("NARA") and Respondent DALLAS COUNTY HISTORICAL FOUNDATION d/b/a THE SIXTH FLOOR MUSEUM AT DEALEY PLAZA ("Museum"), (each a "Party" or collectively, "the Parties") hereby submit this Joint Case Management Statement in advance of the June 6, 2024 Case Management Conference.

1 **1. JURISDICTION AND SERVICE**

2 Plaintiff brought this action against NARA under the Freedom of Information Act (“FOIA”), 5
3 U.S.C. § 552(a)(4)(B) and 28 U.S.C. § 1331. Plaintiff named the Museum as a necessary party under Rule
4 19. The Museum moved to dismiss for lack of personal jurisdiction and the motion is set for hearing on
5 June 6, 2024. Dkt. 26. There are no issues concerning personal jurisdiction, venue, or service with regards
6 to NARA, which filed an answer on April 24, 2024. Dkt. 25.

7 **2. FACTS**

8 This case arises out of Plaintiff’s FOIA request submitted to the National Archives seeking copies
9 of two versions of the Zapruder Film listed in the National Archives catalog and believed to be held in its
10 facility in Baltimore, Maryland. *See* Dkt. 1 (“Complaint”) ¶ 70.

11 Plaintiff alleges that NARA did not fulfill Plaintiff’s FOIA request because it asserted that the
12 Museum held a copyright over the films and Plaintiff lacked permission from the Museum. *Id.* at ¶ 74.
13 Plaintiff further alleges that NARA informed Plaintiff that permission from the Museum was needed to
14 obtain the films. *Id.* at ¶ 56. Plaintiff never sought permission from the Museum. *Id.* at ¶ 57. Plaintiff
15 further alleges that NARA’s response constituted a denial of Plaintiff’s FOIA request, that Plaintiff
16 subsequently appealed the denial, and that NARA did not respond to the appeal within the statutory
17 timeframe. *Id.* at ¶¶ 75-77. Plaintiff brings one cause of action against NARA for violating FOIA and
18 named the Museum as a necessary party. *Id.* at ¶¶ 80-87.

19 NARA answered the complaint on April 24, 2024. Dkt. 25. The Museum filed a motion to dismiss
20 for lack of personal jurisdiction on April 24, 2024. Dkt. 26.

21 **3. LEGAL ISSUES**

22 The Parties plan to meet and confer in good faith to resolve Plaintiff’s claims. If necessary,
23 however, they may ask the Court to resolve whether NARA’s response to Plaintiff’s FOIA request was
24 proper under FOIA as a matter of law.

25 **4. MOTIONS**

26 The Museum’s motion to dismiss for lack of personal jurisdiction is pending. Dkt. 26. After the
27 motion is resolved, the Parties anticipate filing cross-motions for summary judgment according to the
28 schedule proposed below.

1 **5. AMENDMENTS**

2 No amendments are contemplated.

3 **6. EVIDENCE PRESERVATION**

4 The Parties have reviewed the Guidelines Relating to the Discovery of Electronically Stored
5 Information. The Parties have taken all measures to preserve evidence that may be relevant to this case
6 and are not aware of any evidence preservation issues that may affect this case.

7 **7. DISCLOSURES**

8 The Parties agree and stipulate that initial disclosures pursuant to Federal Rule of Civil Procedure
9 26 are not necessary, as this is a FOIA action in which initial disclosures are typically not needed or
10 required. Accordingly, the Parties respectfully request that the court excuse them from the FRCP Rule 26
11 obligation to exchange initial disclosures. The Parties each reserve the right to request initial disclosures
12 if unanticipated issues or disputes arise.

13 **8. DISCOVERY**

14 The Parties have not engaged in discovery and do not anticipate that discovery will be necessary
15 in this case. District courts typically resolve actions to enforce FOIA on summary judgment. *See, e.g.,*
16 *Nat'l Wildlife Fed'n v. U.S. Forest Service*, 861 F.2d 1114 (9th Cir. 1988). Accordingly, the Parties submit
17 that should they not be able to resolve this matter informally, it should be resolved on summary judgment,
18 prior to conducting any discovery. In the rare FOIA cases in which discovery does occur, it generally takes
19 place after the government moves for summary judgment and submits supporting affidavits and a
20 memorandum of law. *See, e.g., Lane*, 523 F.3d at 1134-35 (holding that district court's "delay of
21 discovery" with respect to plaintiffs' FOIA claim until after summary judgment "was certainly within its
22 discretion").

23 **9. CLASS ACTION**

24 This lawsuit is not a class action.

25 **10. RELATED CASES**

26 The Parties are unaware of any related cases or proceedings pending before another court.
27
28

1 **11. RELIEF**

2 Plaintiff: Plaintiff seeks declaratory relief holding that the assertion of copyright by NARA and
 3 the Museum in response to Plaintiff's requests is not a lawful exemption or response under FOIA and that
 4 NARA violated FOIA by failing to disclose the requested records and by failing to respond to Plaintiff's
 5 appeal within the statutory timeframe. Plaintiff also seeks injunctive relief requiring NARA to promptly
 6 release the requested records, and will seek judgment in its favor, reasonable attorneys' fees, and costs.

7 Defendant: Defendant intends to seek summary judgment as to the claim in Plaintiff's complaint.

8 Respondent: This Court does not have personal jurisdiction over the Museum. The Museum has
 9 filed a motion to dismiss requesting entry of an order dismissing the Museum from this case. No claim is
 10 asserted by Plaintiff against the Museum. The Museum would note that it has only been named in this
 11 case as a "Respondent." The single cause of action asserted in the Complaint is for violation of FOIA by
 12 NARA. The Museum is not a government entity and has no obligation under FOIA and, therefore, cannot
 13 be in violation of any obligation under the statute. Defendant is not authorized by the Museum to release
 14 copies of the Museum's copyrighted materials. Plaintiff has not sought the Museum's consent to obtain
 15 copies of the Museum's copyrighted materials.

16 **12. SETTLEMENT AND ADR**

17 Plaintiff does not currently anticipate that alternative dispute resolution would be fruitful in this
 18 matter, but is open to revisiting that position in the future. For now, the Parties request that the action be
 19 exempted from the settlement requirements of the local rule, without prejudice to the Parties contacting
 20 the Court's ADR Program should circumstances change.

21 In the event the Parties are required to select one of the ADR Procedures specified in the Court's
 22 Notice regarding the Court-Directed ADR Program, the Parties request to be assigned to a neutral mediator
 23 from the Court's mediation panel.

24 Regardless, the Parties will work diligently to narrow the issues to conserve the resources of the
 25 Parties and the Court.

26 **13. CONSENT TO MAGISTRATE JUDGE FOR ALL PURPOSES**

27 Not all Parties have consented to have a magistrate judge. Dkt. 17.

1 **14. OTHER REFERENCES**

2 The Parties do not believe that this case is suitable for reference to binding arbitration, a special
3 master, or the Judicial Panel on Multidistrict Litigation.

4 **15. NARROWING OF ISSUES**

5 The Parties will meet and confer to narrow issues in this dispute.

6 **16. EXPEDITED TRIAL PROCEDURE**

7 The Parties do not believe this case is appropriate for an expedited trial.

8 **17. SCHEDULING**

9 The Parties propose the following briefing schedule:

10 MOTION FOR SUMMARY JUDGMENT BY DEFENDANT / RESPONDENT: Four
11 weeks after the Order

12 CROSS-MOTION FOR SUMMARY JUDGMENT BY PLAINTIFFS AND
13 OPPOSITION TO MOTION FOR SUMMARY JUDGMENT BY DEFENDANT /
14 RESPONDENT: Eight weeks after the Order.

15 OPPOSITION TO CROSS-MOTION AND REPLIES IN SUPPORT OF MOTION OF
16 DEFENDANT / RESPONDENT FOR SUMMARY JUDGMENT: Twelve weeks after the Order

17 REPLY IN SUPPORT OF CROSS-MOTION FOR SUMMARY JUDGMENT: Fourteen
18 weeks after the Order

19 HEARING: The Parties will confer upon, and propose, an appropriate hearing date in
20 conjunction with the filing of the motion for summary judgment of Defendant / Respondent.

21 **18. TRIAL**

22 The Parties anticipate this case will be resolved on summary judgment.

23 **19. DISCLOSURE OF NON-PARTY INTERESTED ENTITIES OR PERSONS**

24 Plaintiff: Plaintiff has certified that there are no non-party interests to disclose pursuant to Civil
25 Local Rule 3-15. Dkt. 28.

26 Defendant is exempt from the requirement to file a Certification of Interested Entities or Persons
27 under Civil Local Rule 3-15.

1 Respondent: The Museum filed a Certificate of Interested Entities on March 15, 2024 (Dkt. No.
2 12) confirming there is no conflict of interest other than the named Parties to report.

3 **20. PROFESSIONAL CONDUCT**

4 All attorneys of record have reviewed the Guidelines for Professional Conduct for the Northern
5 District of California.

6 Dated: May 24, 2024

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27 Respectfully Submitted,

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Local Rule 5-1(i)(3) Attestation

In accordance with LR 5-1(i)(3), I hereby attest that I have received permission from each signatory shown in this document to use their e-signature for the purposes of filing this document.

Dated: May 24, 2024

By: /s/ Michael J. Gerardi